

BEFORE THE OHIO PEACE OFFICER TRAINING COMMISSION

IN THE MATTER OF:

**CHIEF JAMES CRAIG'S PRIOR EQUIVALENT
TRAINING DETERMINATION**

THE EXECUTIVE DIRECTOR'S RESPONSE TO CHIEF CRAIG'S BRIEF

I. Introduction

The law in Ohio is clear – *all* applicants must pass the admissions test in order to become a peace officer. “Each student recommended for certification must pass the final written examination with a minimum score to be determined by the commission.” O.A.C. 109:2-1-11(A).

There can be little question that Chief Craig has an extensive history of training and experience in law enforcement. If the Ohio Peace Officer Training Commission (the Commission) determines that it has the legal authority to waive the testing for Chief Craig, his background would most likely weigh in his favor. However, the plain language of the Ohio Administrative Code requires all applicants to pass the state certification exam prior to being certified as a peace officer in Ohio. For this reason alone, the Commission is required to reject Chief Craig's request to waive the testing requirement.

Fortunately for Chief James Craig, he can continue to act as Chief of Police for the Cincinnati Police Department even if he does *not* become a peace officer.

II. The Executive Director and the Commission do not have authority to waive the testing requirement set forth in Ohio Administrative Code 109:2-1-11(A).

A. The authority granted to the Commission and Executive Director is limited by the Ohio Administrative Code

The Executive Director of the Commission has authority “to certify peace officers and sheriffs who have satisfactorily completed basic training programs and to issue appropriate certificates to these peace officers and sheriffs.” R.C. 109.75(D). Although R.C. 109.75(I) grants the Executive Director statutory authority “to perform any other acts that may be necessary or appropriate to carry out the executive director’s duties as set forth in sections 109.71 to 109.77 of the Revised Code,” that power is not absolute and can only be exercised “in accordance with section 109.751 of the Revised Code, the rules adopted pursuant to that section, and the rules adopted by the attorney general pursuant to sections 109.74, 109.741, 109.742, and 109.743 of the revised code.” R.C. 109.75. Accordingly, the Executive Director and the Commission must comply with the limitations found in the Ohio Administrative Code. Pursuant to O.A.C. 109:2-1-12(B)(4), the Commission’s role in this hearing is to resolve any “disputes [arising from] . . . the training assigned by the executive director.” Plainly, this Commission is to determine whether the Executive Director has complied with Ohio law in making his decision.

B. The testing requirement found in O.A.C. §109:2-1-11 is a core component of the basic training program and cannot be waived

Revised Code sections 109.75 and 109.77 require completion of a basic training program prior to certification. The basic training program is composed of several parts, all laid out in O.A.C. 109:2-1, entitled Basic Training Program. The curriculum for the basic training course is described in O.A.C. 109:2-1-16. The Executive Director may grant “credit for equivalent training” when an applicant can “demonstrate to the executive director a level of proficiency that

is equivalent to the proficiency required to complete one or more portions of the basic training course.” O.A.C. 109:2-1-12(B)(3).

In Chief Craig’s case, based on his thirty-six years of law enforcement experience, the Executive Director determined that it was appropriate to give credit for all but thirty hours of the basic training course. This was far more than was credited to other chiefs of police. Chief James Nice of the Akron Police Department was assessed over two hundred hours of training. The Chief Ranger of Geauga Park District, Scott Wilson, was assigned one hundred and ninety-two hours of training.¹ To complete the course, Chief Craig was only required to take courses covering the Ohio Revised Code, as he was unable to provide any evidence that he had ever completed training on Ohio’s statutes. Chief Craig enrolled in Butler Tech Peace Officer Basic Academy number BAS 11-061, and is therefore considered a student for purposes of the Administrative Code.

While the Executive Director is allowed to give credit for portions (or all) of the basic training course, that is the limit of the Director’s power. There are no provisions in the Administrative Code or the Revised Code that allow either the Executive Director or the Commission to waive the requirement that “each student recommended for certification must pass the final written examination.” O.A.C. 109:2-1-11. The plain language of this section clearly states that in order to receive certification as a peace officer in Ohio, a student must pass the state certification exam.

According to Chief Craig, all that is necessary to become certified pursuant to O.A.C. 109:2-1-07 is to attend the class hours required by law. This interpretation is inherently flawed because it would mean that *every* student that completes coursework would automatically be

¹ Transcript, pp. 104-105.

certified – even if they fail the examination. This interpretation would render the testing requirement found under O.A.C. 109:2-1-11 meaningless. The Ohio Supreme Court has recently explained that: “No part [of the statute] should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.” *State ex rel. Carna v. Teays Valley Local Sch. Dist. Bd. of Educ.*, 131 Ohio St.3d 478, 483, 2012-Ohio-1484 (quoting *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Educ.*, 95 Ohio St. 367, 373 (1917)) (brackets in original).

Moreover, such an interpretation defies common sense. If the Commission uses this interpretation of O.A.C. 109:2-1-07, then it will be waiving the testing requirement for not just Chief Craig, but for every student that attends a basic training course. If certificates are only awarded based on O.A.C. 109:2-1-07, then merely attending all educational hours would be sufficient – even if the attendee clearly did not understand what was taught. The purpose of the examination described in O.A.C. 109:2-1-11 is to assure that all peace officers understand what is necessary to do their jobs. The examination is clearly part of the basic training program, which must be successfully completed prior to certification in Ohio.

The Executive Director is permitted to give “credit for equivalent training ... to complete one or more portions of the *basic training course*.” O.A.C. 109:2-1-12(B)(3) (emphasis added). The provision for a final examination is listed separately from the rule that sets forth the minimum curriculum for the basic training course. The “explanation of the basic training course” is found under O.A.C. 109:2-1-16. The “examination” rule is found under O.A.C. 109:2-1-11(A). In other words, the Executive Director can give credit to satisfy some or all of the requirements in the minimum curriculum found under O.A.C. 109:2-1-16 – not the examination requirement found under O.A.C. 109:2-1-11. The Executive Director’s and the

Commission's powers under the Revised Code are to be carried out in accordance with the rules in the Administrative Code. The Administrative Code states that each applicant must pass the final exam prior to certification. Nowhere in the Revised Code or the Administrative Code is there authority for the Commission or the Executive Director to waive O.A.C. 109:2-1-11, regardless of the training and experience of the applicant seeking the waiver.

The Executive Director and Commission only have those powers as are expressly conferred upon it by statute and such incidental powers as are necessary to enable it to perform the duties expressly imposed. See *Shriver v. Board of Commissioners*, 148 Ohio St. 277 (1947). Since the Executive Director and Commission do not have the express power to waive the written examination, it is not within their general or implied authority to waive the required written examination. The fact that the General Assembly expressly granted the Executive Director authority to credit prior experience toward basic training course work and the absence of language allowing the Executive Director to apply prior experience toward the written examination clearly demonstrates a legislative intent to reinforce the mandatory nature of the written examination as expressed in O.A.C. 109:2-1-11(A).

III. Issue 5 and code provisions from other jurisdictions have no bearing on Chief Craig's status.

Chief Craig urges the Commission to exempt him from passing the mandatory written examination and to certify him as an Ohio Peace Officer. Chief Craig asserts that Ohio peace officer certification is not necessary for him to retain his employment, but that certifying him would be in furtherance of Issue 5, a local ordinance specific to Cincinnati that permits it to hire police chiefs from outside the Cincinnati Police Department's ranks.

The purpose of Issue 5 was to increase and diversify the candidate pool in order to attract the best, most qualified candidates from across the country.² For all intents and purposes, it appears that Cincinnati was able to hire their preferred candidate. The testing requirement for peace officers in Ohio did not prevent Chief Craig from being hired, as he was not hired to be a peace officer. As mentioned during his testimony, the job posting for Cincinnati police chief did not mention nor did Cincinnati require Chief Craig to be a certified peace officer in the state of Ohio.³ Additionally, Chief Craig acknowledges that he does not perform the duties of a peace officer, and not being a peace officer has in no way hindered his ability to perform his duties as chief of police in Cincinnati.⁴ He is also under no threat of losing his job if he does not become a peace officer. Therefore, the state certification exam does not implicate Issue 5 in any way. Cincinnati was able to hire the person they wanted for their opening, which goes to the heart of what Issue 5 was meant to do.

Chief Craig also focuses on several other states for justification to waive the testing requirement in this case. However, in the three states cited, each has language specifically allowing the state's certification authority to waive at least portions of testing requirements (Michigan only allows for waiver of skills testing, like driving and first aid).⁵ Ohio has no such language. In fact, as highlighted above, Ohio has a specific code section mandating that every applicant pass the state certification exam. Additionally, while the three states Chief Craig cites have language allowing for waiver, pursuant to the International Association of Directors of Law Enforcement Standards and Training (IADLEST) Reciprocity Handbook, each state still requires

² Chief Craig's Brief, page 8

³ Transcript, pp. 110-111, 130.

⁴ Transcript, pp. 114-115, 126-127.

⁵ Mich. Admin. Code R. 28.14409

applicants from out of state to take a certification exam.⁶ So while Ohio has a specific code provision mandating testing for all applicants, even in states that allow for waivers, they are not always granted.

IV. Conclusion

Chief Craig's arguments are based on word-play and semantics and do not consider the revised and administrative codes in their entirety. The plain language of the codes governing the Executive Director and Commission differentiate between the terms "basic training course" and "basic training program" and it is clear that an applicant cannot be certified without successfully completing the entire program and that the program requires successful completion of the required courses and the written examination.

The Executive Director for OPOTC is allowed to credit officers for portions of the basic curriculum that they have learned elsewhere, either through training and experience, or education. Chief Craig's thirty-six years in law enforcement indicated that he would only need to take thirty hours of training covering the Ohio Revised Code. The Executive Director presumed that with Chief Craig's experience, he should be able to pass the state certification exam without sitting through an entire basic training course.


This Commission is bound by Ohio law. The Executive Director is only permitted to give credit for the basic training course – not the examination. "Each student recommended for certification *must* pass the final written examination. O.A.C. 109-2-11(A) (emphasis added).

The Executive Director and the Commission do not have the authority to waive the testing requirement, and cannot and should not award Chief Craig peace officer certification unless he successfully passes the state certification exam.

⁶ IADLEST Reciprocity Handbook, pp. 15, 25, and 47

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CERTIFICATE OF SERVICE

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